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United States General Accounting Office

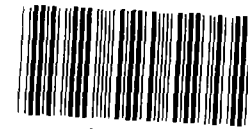
GAO

Briefing Report to the Senate Committee
on Small Business

December 1987

PROCUREMENT

Small Business Suspension and Debarment by the Department of Defense



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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-224072

December 2, 1987

The Honorable Dale Bumpers
Chairman, Committee on Small Business
United States Senate

The Honorable Lowell Weicker, Jr.
Ranking Minority Member
Committee on Small Business
United States Senate

This report responds to your October 30, 1986, request for information regarding small businesses that have been suspended and debarred by the Department of Defense (DOD). Suspensions and debarments are used to protect the government against fraudulent and unethical contractors. You were concerned that small firms may not always be given adequate opportunity to present their cases and to demonstrate their "present responsibility" before being suspended, or to implement a program of "remedial actions" designed to eliminate the bases for the suspension or debarment action.

Our overall assessment of federal suspension and debarment procedures was presented in our February 1987 report to the Chairman, House Committee on Government Operations, entitled Procurement: Suspension and Debarment Procedures (GAO/NSLAD-87-37BR). In that report, we noted that the current process, with some changes and clarifications, provides an effective tool for protecting the government against the risks associated with doing business with fraudulent, unethical, or nonperforming procurement contractors. We believe the current process maintains an appropriate balance between protecting the government's interests in its contractual relationships and providing contractors with due process.

As agreed, the objective of our review was to supplement our recently-completed work by identifying, to the extent possible, those contractors suspended by DOD in fiscal years 1983 and 1985 that were small businesses, and determining the current status of those suspended contractors.

Neither DOD nor the Small Business Administration (SBA) has an information system that records the sizes of all defense contractors or identifies whether suspended contractors are small businesses. As a result, the information we collected regarding how many suspended contractors

were small businesses was incomplete. Furthermore, DOD's statistics on the number of suspensions include both firms and individuals. For example, the suspension of a company and its three top officials is reported as four suspensions. Therefore, we needed to examine each suspension case to determine how many actions were taken against firms as opposed to individuals.

We reviewed 262 of the 380 suspension actions taken by DOD against firms and individuals in fiscal years 1983 and 1985. Of the actions we reviewed, 112, or 42.7 percent, involved firms, 45, or 40.2 percent of which were listed in DOD's contracting activity reporting (DD-350) system, indicating they had held contracts valued at more than \$25,000. Of these 45 suspended firms, 40, or 88.9 percent, were identified as small businesses. The number of small firms suspended as a percentage of total suspended firms listed decreased from 14 of 15, or 93.3 percent in fiscal year 1983, to 26 of 30, or 86.7 percent in fiscal year 1985.

DOD suspension and debarment officials told us that a firm's size has no bearing on whether or not it is suspended. They stated that since most suspensions are based on indictments, a firm's size is irrelevant. These officials told us they do not believe DOD should keep track of how many small businesses are being suspended since size has no bearing on their decision. To highlight size would, in their view, serve no useful purpose.

DOD officials also believe that by suspending and debarring fraudulent and non performing small businesses they have created opportunities for legitimate and capable small businesses to be awarded contracts through the various SBA programs.

DOD officials believe that most of the remaining 67 (112 minus 45) suspended contractors which were not listed in the DD-350 system were probably also small businesses. Assuming they all were small businesses, the number of known or assumed small firms suspended is 107 (40 plus 67). Of these, 69, or 64.5 percent, were later debarred, while 18, or 16.8 percent, entered into settlement agreements with DOD in place of a continued suspension or debarment. Such agreements, usually reached after the firm has already been suspended, outline the measures the contractor has taken, or agrees to take, which the government has identified as needing improvement or correction. In this way, the contractor is able to demonstrate present responsibility, and be reinstated to do business with the government.

DOD suspension and debarment officials said they apply the same rules to all contractors, large or small, when deciding whether to lift a suspension or debarment. Basically, they look to

- protect DOD from the individual(s) who perpetrated any fraud or misconduct,
- ensure that the contractor has taken corrective actions within the company to help ensure that the fraudulent activity will not be repeated, and
- ensure that the government will be reimbursed for its losses.

According to a DOD official, these three remedial actions are considered to be the key factors in determining whether a company has regained its present responsibility. Regarding the first remedy, a contractor would need to remove those individuals responsible for the problems that led to the suspension. DOD officials noted that this can be difficult, if not impossible, for those small businesses where the company president is the individual involved.

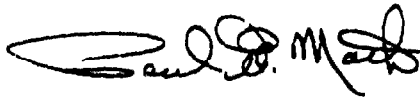
The third remedial action may also be difficult for small businesses to carry out. For example, the Special Assistant for Contracting Integrity at the Defense Logistics Agency (DLA) commented that one small contractor told DLA the only way it could afford to repay the government would be to obtain more government contracts—an unacceptable solution. On the other hand, large contractors are much more likely to have the financial resources to repay the government in order to have their suspensions lifted and resume defense contracting.

In performing our analysis, we supplemented the information obtained during our review of government wide suspension and debarment procedures with a case-by-case review of suspended contractor files maintained by the Army, Air Force, Navy, and DLA. Using DOD's contracting action reporting system, we manually matched the names of suspended firms against the names of those firms listed in the system. We also spoke with DOD suspension and debarment officials and SBA officials to obtain their views and comments. We performed our review in accordance with generally accepted government auditing standards from March to August 1987.

We are sending copies of this briefing report to the Secretaries of Defense, Air Force, Army, and Navy and to the Director, DLA. Copies will also be made available to other interested parties upon request.

If you have any questions, please call me on 275-4587.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul F. Math". The signature is stylized with loops and a long horizontal stroke at the beginning.

Paul F. Math
Associate Director

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Abbreviations

DLA	Defense Logistics Agency
DOD	Department of Defense
PASS	Procurement Automated Source System
SBA	Small Business Administration

DOD Suspensions and Debarments

Information on Size of Suspended Contractors Is Incomplete

We found that neither the SBA nor DOD maintains an automated information system which tracks the sizes of all DOD contractors, or which identifies whether suspended contractors are small businesses. The suspension/debarment offices within the Army, Navy, Air Force, and DLA do not track such information. Therefore, information as to whether contractors suspended by DOD were small businesses was neither complete nor readily available.

The two primary information systems we identified were DOD's DD-350 contracting action reporting system and the SBA's Procurement Automated Source System (PASS). We sought to match the names of the firms suspended by DOD against the names contained in these systems; however, each system had features which limited this effort.

For example, while the DD-350 system contains historical information on firms that received DOD contracts and identifies those that received awards because they were small businesses, it only records contract actions above \$25,000. Contracting information for actions under \$25,000 is not kept in any centralized DOD information system. One DLA official estimated that the DD-350 system captures about 97 percent of DOD procurement dollars but only about 3 percent of all procurement actions. According to an official from DOD's Directorate for Information Operations and Reports, small business accounted for 98.9 percent of all actions under \$25,000 in fiscal year 1986.¹

The SBA's PASS system lists those businesses that request to be listed, regardless of whether or not they have received government contracts, in order to provide government procurement officials with information on potential supply sources. The system is not designed to identify or track government contractors. Of those small businesses that have received government contracts, the SBA tracks only minority and disadvantaged firms, and firms that have received SBA loans.

Most Suspended Firms Are Small Businesses

The Federal Acquisition Regulation section on suspensions and debarments (section 9.4) defines a contractor as any individual or other legal entity that submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a government contract. The Federal Acquisition Regulation also states that affiliates of contractors

¹While this information is not routinely kept in any centralized DOD information system, the Directorate did collect this information from the buying activities for fiscal year 1986. The Directorate did not have information on how many different small businesses received DOD contracts under \$25,000.

and subcontractors under government contracts may also be suspended or debarred. In accordance with these regulations, the Army, Navy, Air Force, and DLA have suspended both individuals and companies, as well as affiliates and subcontractors.

We reviewed those suspension actions taken by DOD in fiscal years 1983 and 1985 for which complete documents were available. In all, we reviewed 262 of the 380 suspension actions taken by DOD in these two fiscal years. Of the total suspension actions we reviewed, less than half (112, or 42.7%) involved companies, as shown in table I.1. The individuals suspended were associated with these firms or, in a few cases, were suspended while the firm was not.

Table I.1: DOD Suspensions, Fiscal Years 1983 and 1985

Service/ agency	Actions reviewed	Firms suspended	Firms in DD-350 system		Firms not in DD-350 system	Total presumed to be small businesses	
			Total	Listed as small			
Army	'83	7	3	2	2	1	3
	'85	53	26	17	14	9	23
Navy	'83	17	7	2	2	5	7
	'85	41	15	5	5	10	15
Air Force	'83	12	5	4	4	1	5
	'85	28	11	1	1	10	11
DLA	'83	57	28	7	6	21	27
	'85	47	17	7	6	10	16
Total	262	112	45	40	67^d	107	
			42.7% ^a	40.2% ^b	88.9% ^c	59.8% ^d	95.5% ^b

^aPercentage of actions reviewed

^bPercentage of total firms suspended.

^cPercentage of total suspended firms listed in DD-350.

^dAccording to DOD officials these firms can be presumed to be small businesses.

To determine how many of the 112 suspended companies were small businesses, we selected the DD-350 system for matching because it can be used to search for firms by name and identification number, and because it contains prior year information (back to about fiscal year 1980). We found that 45, or 40.2 percent of the firms suspended by DOD in fiscal years 1983 and 1985 were listed in the DD-350 system. Of those listed, most (40, or 88.9 percent) were identified as having been awarded the contract because they were a small business. The number of suspended small businesses as a percentage of those listed decreased from

**Appendix I
DOD Suspensions and Debarments**

fiscal year 1983 to 1985—from 14 of 15, or 93.3 percent, to 26 of 30, or 86.7 percent. (See tables I.2 and I.3.) By comparison, small businesses accounted for 70.9 percent of all DOD contractors with actions over \$25,000 in fiscal year 1986. ²

DOD suspension and debarment officials noted that a suspended firm might not be recorded in the DD-350 system for any one of four reasons. The firm may have

- received a contract from DOD for under \$25,000.
- served as a subcontractor,
- been affiliated with a suspended DOD contractor, or
- been indicted along with defense contractors, although not itself a DOD contractor.

As stated previously, federal officials may suspend or debar any contractor that may reasonably be expected to compete for, or be awarded, a government contract.

Table I.2: DOD Suspensions, Fiscal Year 1983

Service/ agency	Actions reviewed	Firms in DD-350 system		Listed as small
		Firms suspended	Total	
Army '83	7	3	2	2
Navy '83	17	7	2	2
Air Force '83	12	5	4	4
DLA '83	57	28	7	6
Total	93	43	15	14
		46.2% ^a	34.9% ^b	93.3% ^c

^aPercentage of total actions reviewed.

^bPercentage of total firms suspended

^cPercentage of total suspended firms listed in DD-350

²The DOD Directorate for Information Operations and Reports has not published any reports and does not routinely compile this information. However, by using the DD-350 system, the Directorate made a special computer run for fiscal year 1986 to determine how many small businesses contracted with DOD.

Table I.3: DOD Suspensions, Fiscal Year 1985

Service/ agency	Actions reviewed	Firms in DD-350 system		Listed as small
		Firms suspended	Total	
Army '85	53	26	17	14
Navy '85	41	15	5	5
Air Force '85	28	11	1	1
DLA '85	47	17	7	6
Total	169	69	30	26
		40.8% ^a	43.5% ^b	86.7% ^c

^aPercentage of total actions reviewed

^bPercentage of total firms suspended.

^cPercentage of total suspended firms listed in DD-350.

Debarments of Suspended Contractors

DOD suspension and debarment officials told us they believed most of the 67 suspended contractors not listed in the DD-350 system were probably also small businesses. If all the suspended contractors not listed were assumed to be small businesses, the total number of suspended firms known or assumed to be small would be 107 (40 plus 67) or 95.5 percent. (See table I.1.)

Of these 107 suspended contractors, 69, or 64.5 percent, were debarred—67 were based on convictions; 2 on “willful failure to perform.” DOD reached settlement agreements and either terminated the suspension or limited the debarment period of 18, or 16.8 percent of the suspended contractors, as shown in table I.4. This percentage decreased slightly from fiscal year 1983 to 1985—DOD settled with 8 of 42, or 19.1 percent of these contractors in fiscal year 1983 as compared with 10 of 65, or 15.4 percent in fiscal year 1985. (See tables I.5 and I.6.)

DOD also terminated a number of suspensions either because the contractor was acquitted, the indictment was dropped, or court proceedings had not begun within the allotted 12 month period. In all, 11, or 10.3 percent, of the 107 contractors had their suspensions lifted for these reasons. (See table I.4.) Nine of the contractors, or 8.4 percent, remain suspended pending the resolution of court proceedings. All of those still suspended were suspended in fiscal year 1985, as shown in tables I.5 and I.6.

Appendix I
DOD Suspensions and Debarments

Table I.4: Disposition of Suspensions of Known or Assumed Small Firms, Fiscal Years 1983 and 1985

Service/ agency	Total	Debarred ^a	Remains suspended	Suspension/debarments lifted			No indictment
				Settled	Acquitted		
Army '83	3	2	0	0	1	0	0
Army '85	23	11	6	1	4	1	1
Navy '83	7	6	0	1	0	0	0
Navy '85	15	9	0	6	0	0	0
Air Force '83	5	3	0	1	0	0	1
Air Force '85	11	10	0	0	1	0	0
DLA '83	27	21	0	6	0	0	0
DLA '85	16	7	3	3	3	0	0
Total	107	69	9	18	9	2	2
Percentage of total		64.5%	8.4%	16.8%	8.4%	1.9%	

Table I.5: Disposition of Suspensions of Known or Assumed Small Firms, Fiscal Year 1983

Service/ agency	Total	Debarred ^a	Remains suspended	Suspension/debarments lifted			No indictment
				Settled	Acquitted		
Army '83	3	2	0	0	1	0	0
Navy '83	7	6	0	1	0	0	0
Air Force '83	5	3	0	1	0	0	1
DLA '83	27	21	0	6	0	0	0
Total	42	32	0	8	1	1	1
Percentage of total			76.2%	0.0%	19.1%	2.4%	

^aAll 32 debarments were based on convictions.

Table I.6: Disposition of Suspended Known or Assumed Small Firms, Fiscal Year 1985

Service/ agency	Total	Debarred ^a	Remains suspended	Suspension/debarments lifted			No indictment
				Settled	Acquitted		
Army '85	23	11	6	1	4	1	1
Navy '85	15	9	0	6	0	0	0
Air Force '85	11	10	0	0	1	0	0
DLA '85	16	7	3	3	3	0	0
Total	65	37	9	10	8	1	1
Percentage of total			56.9%	13.8%	15.4%	12.3%	

^aAll but two of the 37 debarments were based on convictions

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